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No. [redacted] 104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

UNITED STATES OF AMERICA, Petitioner,

vs.

FLORENCE E. WILLIAMS, Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT.

WILLIAM KAUFMAN,
Attorney for Respondent.

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Josiah Smith Co., Pennsylvania Representative,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 894.

UNITED STATES OF AMERICA, Petitioner,
vs.
FLORENCE E. WILLIAMS, Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENT.

Counsel for respondent considers the unanimous opinion of the Circuit Court of Appeals to be ample and satisfactory argument for the respondent, and will not add anything to it except references to the case of Singles vs. United States, 61 Ct. Cls. 433—the only case besides the one at bar where an adjusted service certificate has been

before any court; and although it appears to have been decided on January 11th, 1926, no appeal has been taken by either party.

It was there held: "The claim of a beneficiary for adjusted compensation under the World War Adjusted Compensation Act of May 19th, 1924, is a claim for a gratuity within the jurisdiction of the Court of Claims, and is not a claim for a pension."

And on page 436 the Court, in its opinion, said:

> "If the claim be construed as a pension, the Court's jurisdiction is expressly excluded by the organic Act. Section 145, Judicial Code. But in cases of a mere gratuity granted by a statute, this Court has frequently granted relief. See Semple case, 24 C. Cls. 422; Mumford case, 31 C. Cls. 210; United States vs. Realty Co., 163 U. S. 427-441. See the many 'extra pay' cases growing out of the Spanish War, 39 C. Cls. 569, based upon the Hunt case, 38 C. Cls. 704. * * * The case becomes one against the United States which should be considered upon its merits. * * *"

Counsel for respondent would also add to the opinion of the Circuit Court of Appeals references to some of the salient features of the statute involved which indicate that Congress did not intend it to be a "pension" Act, but rather an "adjusted" or "extra" compensation Act, namely:

It is entitled, "An Act to provide *adjusted compensation* for veterans of the World War and for other purposes."

By Section 601, the amount of the adjusted service credit to which the veteran is entitled must be computed, as therein specifically directed.

By Section 641 the Director is ordered to issue, without cost, to each veteran an adjusted service certificate, the amount of which is to be calculated, and the terms of which are to be, as specifically directed by this section. There is nothing left to the discretion of the Director. The adjusted service credit, a definite amount in dollars and cents, due to each veteran, increased by 25%, is directed to be used to purchase for him an adjusted service certificate, in which the Government certifies that the face value "shall become due and payable" to the veteran on a specified date; or upon the death of the veteran prior to that date, to the beneficiary therein named. The certificate is therefore a contractual obligation, based upon actual monetary consideration, and is therefore neither pension nor gratuity.

Section 641 also provides that if for certain reasons the certificate cannot be paid to the beneficiary, *it shall be paid to the estate of the veteran.*

Section 642 grants and limits loan privileges.

Section 645 creates a fund for the payment of the certificates and makes an appropriation, and every Congress since then has made enormous appropriations to enable the Act to be carried into effect.

Throughout the Act, it is evident that the benefits conferred were intended as "additional compensation," and "extra pay," for services rendered.

There is no expression or hint that they were intended to be given as a "pension."

All these incidents definitely take the adjusted service certificate out of the realm of pension, and make it an enforceable, contractual obligation of the United States.

The cardinal rule of interpretation for both statutes and contracts, that the plain words employed govern, applies. Neither parties nor Court may read into a statute or a contract any provision or exception not found therein.

It follows that the claim in this suit is "founded upon a law of Congress" and "upon a contract * * * express with the Government of the United States," and is not a claim for a "pension"; therefore the District Court has jurisdiction by the express provisions of Paragraph 20 of Section 24 of the Judicial Code, quoted on page 2 of petitioner's brief.

On page 13 of petitioner's brief, counsel for petitioner have recited "Reasons for Granting the Writ." None of them appears to be within those enumerated by this Court in paragraph 5, of Rule 35.

Furthermore, this petition will upon consideration appear to be frivolous, and intended for delay and to oppress the respondent.

The respondent is so poor that when she sued out the Writ of Error from the District Court to the Circuit Court of Appeals she had to present a petition in *forma pauperis* (R. 28-31.) The case has been pending for more than two years, and the Government has not yet filed an answer to

the merits. The question here presented is merely one of jurisdiction. The Government would have forfeited none of its rights if it had reserved its objection to the jurisdiction by proper exception, filed an answer or affidavit of defense to the merits, and let the case be decided thereon. If it lost, it could always have raised the question of the jurisdiction on subsequent appeal. In a sense it is a cruel hardship on this respondent for the Government to pick out her case as a test case for subsequent cases, as it says it has done, in enumerating the "Reasons for Granting the Writ," on pages 13 and 14 of its brief. Why should she be compelled to sustain such a hardship? Who is to defray her costs? Her situation and condition do not appear to have received any consideration from the Government or from any of its officers, or directors of departments; they suffer nothing, and they probably consider that the Government will suffer nothing, because it cannot be mulcted with either interest or costs.

The petition for Writ of Certiorari ought to be dismissed.

April __, 1928.

Respectfully submitted.

WILLIAM KAUFMAN,
Attorney for Respondent.

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

No. 104 OCTOBER TERM, 1928.

UNITED STATES OF AMERICA,
Petitioner,

vs.

FLORENCE E. WILLIAMS,
Respondent.

BRIEF FOR RESPONDENT, SUPPLEMENTAL TO BRIEF FOR RESPONDENT IN PETITION FOR WRIT OF CERTIORARI AT NO. 894 OCTOBER TERM, 1927.

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IN THE

Supreme Court of the United States

No. 104 OCTOBER TERM, 1928.

UNITED STATES OF AMERICA,
Petitioner,

vs.

FLORENCE E. WILLIAMS,
Respondent.

Brief for Respondent, Supplemental to Brief for Respondent in Petition for Writ of Certiorari at No. 894 October Term, 1927.

Only the facts alleged in the Petition of Claim (Record, pages 3 *et seq.*) may be considered as the facts in this case.

They are as follows:

An Adjusted Service Certificate was issued and delivered to William C. Williams, the veteran, and husband of the Respondent upon his application and pursuant to the provisions of the World War Adjusted Compensation Act of May 19, 1924, c. 157, 43 Stat. 121, and this suit is based

upon that certificate and Act of Congress, the Respondent being the beneficiary named in the application and referred to in the certificate.

The veteran died August 13, 1925. Thereupon, according to the certificate and the Act, the face value thereof, namely, $867.00, became immediately due and payable to the Respondent, beneficiary, and due proof of claim was filed and all requirements of law and of the Director concerning the making and filing of proof of claim were complied with.

After payment was demanded and refused, this suit was brought.

A copy of the Adjusted Service Certificate is printed in the record (pages 12 *et seq.*), the first paragraph of which contains the following:

> "It is hereby certified that pursuant to the World War Adjusted Compensation Act and in conformity with the laws of the United States, the amount herein named, $867.00 * * * *shall become due and payable* on the first day of January, 1945, to William C. Williams, herein referred to as the veteran, or upon the death of the veteran prior to the due date above named, the amount hereinabove stated *shall become due and payable* to the beneficiary named by the veteran * * *."

The only question in the case is, is the claim of the Respondent a claim for a pension?

We have pointed out in the "Brief for Respondent" the several provisions of the Act which definitely take the Adjusted Service Certificate out of the realm of "Pension" and make it an enforcible contractual obligation of the United States, and the Circuit Court of Appeals has held,

and we contend correctly, that the District Court has jurisdiction as a Court of Claims of the claim upon it under that provision of the Judicial Code, now Paragraph 20 of Section 41 of Title 28, U. S. C.

This being a suit to recover a sum of money from the United States and not a proceeding in mandamus against any administrative officer, Sec. 4 (b) of the Act of July 3, 1926, c. 751, 44 Stat. 826, now Sec. 620 of Title 38, U. S. C., referred to on page 16, and copied on page 25, of the Petition for Certiorari, does not apply. It clearly has reference only to the administrative powers of the officers therein named, as granted by Sec. 306 of the original Act, now Sec. 616 of Title 38, U. S. C., which reads as follows:

> "Any officer charged with any function under the provisions of this chapter shall make such regulations not inconsistent with the provisions of this chapter as may be necessary to the efficient administration of such function."

The language of these sections of the statutes need no construction. They will not justify any one of the officials named to act in a manner "inconsistent with the statute," or to make a wilful, capricious or arbitrary decision, contrary to the terms of the statute or of the certificate.

In regard to the Act of 1926, Counsel for the Government argue (page 17) as follows:

> "This indicates that the benefits conferred by the Act are to be awarded by the proper executive departments, not enforced by the courts. And in any event in the present case the Director of the Veterans' Bureau has decided that the respondent should not be paid, and, in the absence of bad faith, the provisions of Section 310 make this decision final and not subject to review by the courts unless the section is to be construed as applicable only to decisions on matters leading up and prior to the issuance of a certificate."

In the first place, the statement that it was the Director of the Veterans' Bureau who has decided that the Respondent should not be paid, is an unwarranted assumption of a fact not alleged in the Petition of Claim and must, therefore, be disregarded.

In the next place, the averments of the Petition of Claim *which are all of the facts which may be considered at the present time* present a clear case where the facts are undisputed and the only conclusion properly to be drawn therefrom is one favorable to the claimant and where the law has evidently been misconstrued, and the action of the executive officer who is responsible for the refusal of the payment of this claim, whoever he may be or whatever his authority, has been arbitrary and capricious.

This presentation of the facts of the case completely refute the presumption that such executive officer has acted in good faith in the discharge of his duties.

Also, since the facts are undisputed, the decision of this court in *Medbury* vs. *U. S.* 173 U. S. 492, applies. In that case it was contended for the Government that the decision of the Secretary of the Interior under the Act of Congress involved was final and conclusive and that the Court of Claims did not have jurisdiction. The Court of Claims did decide that it did not have jurisdiction, but the Supreme Court, decided otherwise, saying (after holding on pages 494 and 495, that the claim was founded upon a law of Congress of 1880, and that by the Act of March 3, 1887, the Court of Claims is given jurisdiction to hear and determine among other things all claims founded upon any law of Congress) on pages 497 and 498, as follows:

> "Although the right to recover back the excess of payment in this proceeding is based upon the Statute

of 1880, we do not think it comes within the principle of those cases which hold that where a liability and a remedy are created by the same statute, the remedy thus provided is special and exclusive. In this case it is not a right and a remedy created by the same statute. The statute creates the right to have repayment under the facts therein stated, but it gives no remedy for a refusal on the part of the Secretary to comply with its provisions. * * * We cannot suppose that Congress intended in such case to make the decision of the Secretary final when it was made on undisputed facts. If not, then there is a remedy in the Court of Claims for none is given in the Act which creates the right. The procedure for obtaining the repayment as provided for in the Act must be followed and when the application is erroneously refused, the party wronged has his remedy, but that remedy is not furnished by the same statute, which gives him the right.

"If there were any disputed questions of fact before the Secretary, his decision in regard to those matters would probably be conclusive and would not be reviewed in any court. But where, as in this case, there is no disputed question of fact and the decision turns exclusively upon the proper construction of the Act of Congress, the decision of the Secretary refusing to make the payment is not final and the Court of Claims has jurisdiction of such a case."

Applying the cardinal rule of interpretation both of statutes and of contract that plain words employed govern and that neither parties nor court may read into a statute or contract something not therein written, we emphatically contradict the conclusion reached by Counsel for the Government on page 16 of the Petition for Certiorari that the provisions of the Act of 1926 constitute "Further evidence that Congress considered that the benefits conferred by the Adjusted Compensation Act are in the nature of pensions."

That is a most violent conclusion, not supported or justified by the language of the Act of 1926, or by any provisions of the original Act.

Neither is it relevant nor proper to refer in this case to any of the sections of the Act, (see page 25 of the Petition for Certiorari), which deal with cases where the amount of the *Adjusted Service Credit* is less than $50, and *therefore, according to the Act*, Title 3, Sec. 301, (page 20 of the Petition for Certiorari), *entitled only to* "adjusted service pay" *and not to an* "adjusted service certificate," —for the simple reason, that they do not come within the facts of this case.

As to the statement of Counsel for the Government on page 16 of the Petition for Certiorari, as follows:

> "But the distinguishing characteristic of a pension is that it is gratuitous, not that it is paid in installments at intervals or in a lump sum at one time"

in support of which it will be noted that no authority has been cited:—

We submit to the contrary, the following:

30 Cyc., 1368:

> "A pension may be defined as a periodical allowance of money granted by the Government for services rendered, in particular to a soldier or sailor in connection with a war or with military operations."

Same definition may be found in Anderson's "Law Dictionary."

Judge Baldwin in *Price vs. Society for Savings*, 64 Conn. 362, at page 366, gives the following definition which is perhaps the most frequently referred to and cited with approval:

> "A pension is a bounty for past services rendered to the public. It is mainly designed to assist the pensioner in providing for his daily wants."

These definitions emphasize the characteristics of a pension to be "a periodical allowance" and "mainly designed to assist the pensioner in providing for his daily wants"—decisively differentiating the claim in the case at bar from that of a claim for a pension.

Section 501 of the Act, now Sec. 641 of Title 38, U. S. C., the provisions of which are embodied in the certificate, provides that if for certain reasons the certificate cannot be paid to the beneficiary, *it shall be paid to the estate of the veteran*.

This is very significant, because a pension always dies with the pensioner.

In *Hall's Estate*, 20 Pa. D. R., 867, wherein Judge Baldwin's definition of pension was adopted, it was held that a pension is not part of the assets of the decedent's estate.

Section 505 of the Act, now Sec. 645 of Title 38, U. S. C., creates a fund for the payment of the certificates and makes an appropriation, and every Congress since then has made enormous appropriations to enable the Act to be carried into effect.

This is noted in the opinion of the Circuit Court of Appeals; and it has been held is equivalent to a recognition of the right of the claimant and to a promise to pay the claim.

In *Soule vs. U. S.*, 38 Ct. Cl. 525, it was held that the court had jurisdiction, and petitioner was allowed to recover in suit decided in 1903, a claim on account of special back service pay, bounty and allowances between August 21, 1862, and July 5, 1863, under an Act making appropriations for the year ending June 30, 1897. The court held (page 530) that by the Act making the appropriation, Con-

gress certainly intended that any arrears of pay or bounty should be paid, and that right should be recognized to the full extent of giving the soldier an opportunity of establishing his right, and thereby practically asserting his right to payment and redress. Also, (page 531, referring to *Hukal vs. U. S.*, 16 Ct. Cl. 562) that an appropriation for payment of a particular demand or *class of demands* includes a recognition of their legality and justice and is equivalent to a mandate to the officers of the Treasury to pay the same; that the court has jurisdiction of claims which Congress acknowledges as right against the Government; and that they come within the intent of the statute (Paragraph 20 of Sec. 41 of Title 28, U. S. C.) *declaring that the court has jurisdiction to hear and determine all claims founded upon a law of Congress.* Also, (pages 531 and 532) applying that principle to the case at bar, it must follow that the Appropriation Act is a *promise* on the part of the United States to pay such soldiers as come within its designation whatever may be due them. Also, (page 532) that if claimant has a right of recovery, it is not necessary that he should resort to the accounting department of the Government in the first instance; he may seek that forum of adjudication which has the right to pass judicially on the question. Also, (page 534) as follows:

> "Congress in the passage of the Appropriation Act on which claimant founds her claim recognized the right of decedent to pay, if he had not been paid * * * and that right being founded on an Act of Congress makes consummate in his personal representative a right to whatever may be due him, that right being existent under the statute, the jurisdiction of this court is open in order that there may be a judicial investigation and determination of the question as to whether there was anything due the decedent at the time of his death for services rendered during the Civil War. * * *"

To the same effect, we beg also to refer to *Newcomber vs. U. S.*, 51 Ct. Cl. 408, and *Magannis vs. U. S.*, 52 Ct. Cl. 271.

In conclusion, we commend the reasoning contained in the unanimous opinion of the Circuit Court of Appeals, with special reference to the following extract:

> "Whatever the right or claim of Williams was in name, the Government in pursuance of statutory power issued and delivered to him paid-up insurance evidenced by the certificate and promised to pay it upon the happening of several events, one of which has now occurred. *With the facts as they admittedly are by this demurrer the suit is simply against the United States upon its undertaking to pay money to the beneficiary.* As this undertaking is not shown by the legislative history leading up to the enactment of the statute under which it was authorized or by the terms of the statute itself to be a pension, we cannot hold that the Government's obligation as indicated by the certificate running to the grantee's beneficiary as well as to the grantee himself is a pension. Accordingly, being for a sum less than $10,000.00 the United States granted jurisdiction to the District Court to entertain this action."

We confidently submit that the authorities cited establish that the claim in suit is not a pension, that it is founded upon a contract express with the Government and an Act of Congress, and that the claimant had the right to resort to the District Court as a Court of Claims for redress when payment of her claim was refused.

Respectfully submitted,

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